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SERVICE DATE – JULY 29, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 603X)

CSX TRANSPORTATION, INC.–ABANDONMENT
EXEMPTION–IN WEBSTER COUNTY, WV

Decided: July 27, 2005

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 10.5 miles of railroad between milepost BUG-0.0 at Cowen and milepost BUG 10.5 at Bolair, in Webster County, WV. Notice of the exemption was served and published in the Federal Register on February 11, 2002 (67 FR 6320-21). On July 30, 2002, a decision and notice of interim trail use or abandonment (NITU) was served, reopening the proceeding and authorizing a 180-day period for Webster County Chamber of Commerce (Webster County) to negotiate an interim trail use/rail banking agreement with applicants for the entire line. At the request of CSXT, the negotiating period under the NITU was extended several times; the latest extension decision, served on February 7, 2005, extended the negotiation period until July 22, 2005. The February 7, 2005 decision also extended the deadline for CSXT to file its notice of consummation until September 19, 2005.

By letter filed on July 25, 2005, CSXT requested an extension of the NITU negotiating period until January 18, 2006, stating that the applicants have not consummated the abandonment and have been unable to finalize negotiations but desire to continue negotiations with Webster County for the acquisition of the right-of-way. Additionally, CSXT requested an extension of the consummation notice filing deadline until March 19, 2006.

Even if a negotiating period expires, when a carrier consents to continuing negotiations and has not consummated abandonment of the line, the Board continues to have jurisdiction to grant an extension. Under the circumstances, an extension of the negotiation period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d STB, 654, 659 (8th Cir. 1996) cert. denied, 519 U.S. 1149 (1997). According, the NITU negotiation period will be extended to January 18, 2006, and the consummation deadline will be extended to March 19, 2006.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSXT's request for an extension of the negotiating period and its request for an extension of time to exercise abandonment authority is granted.
2. The negotiating period under the NITU is extended to January 18, 2006.
3. The authority to abandon must be exercised on or before March 19, 2006.
4. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary